

Introduced by Senator Anderson

February 23, 2015

An act to amend Sections 2103, 2104, 2107, and 2110 of the Family Code, relating to dissolution.

LEGISLATIVE COUNSEL'S DIGEST

SB 340, as introduced, Anderson. Dissolution: disclosure.

Existing law requires each party to a proceeding for dissolution of marriage or legal separation to serve on the other party a preliminary declaration of disclosure of assets, as specified, and a final declaration of disclosure, as specified. Existing law requires each party to serve a preliminary declaration of disclosure either concurrently with the petition for dissolution, or within 60 days of filing the petition for dissolution of marriage. Existing law specifies, in the case of a default judgment, that a petitioner shall not be required to serve or receive a final declaration of disclosure, but a preliminary declaration of disclosure by the petitioner is still required.

This bill would provide that a preliminary declaration of disclosure is not required by a petitioner if the petitioner served the summons and petition by publication or posting pursuant to court order and the respondent has defaulted. The bill would require, when a petitioner has served the summons and petition by publication or posting pursuant to court order and the respondent files a response prior to default judgment being entered, the petitioner to serve the respondent with a preliminary declaration of disclosure within 30 days of the response being filed. The bill would make other related, conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 2103 of the Family Code is amended to read:

2103. In order to provide full and accurate disclosure of all assets and liabilities in which one or both parties may have an interest, each party to a proceeding for dissolution of the marriage or legal separation of the parties shall serve on the other party a preliminary declaration of disclosure under Section ~~2104~~ 2104, *unless service of the preliminary declaration of disclosure is not required pursuant to Section 2110*, and a final declaration of disclosure under Section 2105, unless service of the final declaration of disclosure is waived pursuant to Section 2105 or 2110, and shall file proof of service of each with the court.

SEC. 2. Section 2104 of the Family Code is amended to read:

2104. (a) Except by court order for good cause, as provided in Section 2107, *or when service of the preliminary declaration of disclosure is not required pursuant to Section 2110*, in the time period set forth in subdivision (f), each party shall serve on the other party a preliminary declaration of disclosure, executed under penalty of perjury on a form prescribed by the Judicial Council. The commission of perjury on the preliminary declaration of disclosure may be grounds for setting aside the judgment, or any part or parts thereof, pursuant to Chapter 10 (commencing with Section 2120), in addition to any and all other remedies, civil or criminal, that otherwise are available under law for the commission of perjury. The preliminary declaration of disclosure shall include all tax returns filed by the declarant within the two years prior to the date that the party served the declaration.

(b) The preliminary declaration of disclosure shall not be filed with the court, except on court order. However, the parties shall file proof of service of the preliminary declaration of disclosure with the court.

(c) The preliminary declaration of disclosure shall set forth with sufficient particularity, that a person of reasonable and ordinary intelligence can ascertain, all of the following:

(1) The identity of all assets in which the declarant has or may have an interest and all liabilities for which the declarant is or may be liable, regardless of the characterization of the asset or liability as community, quasi-community, or separate.

1 (2) The declarant's percentage of ownership in each asset and
2 percentage of obligation for each liability ~~where~~ *when* property is
3 not solely owned by one or both of the parties. The preliminary
4 declaration may also set forth the declarant's characterization of
5 each asset or liability.

6 (d) A declarant may amend his or her preliminary declaration
7 of disclosure without leave of the court. Proof of service of any
8 amendment shall be filed with the court.

9 (e) Along with the preliminary declaration of disclosure, each
10 party shall provide the other party with a completed income and
11 expense declaration unless an income and expense declaration has
12 already been provided and is current and valid.

13 (f) The petitioner shall serve the other party with the preliminary
14 declaration of disclosure either concurrently with the petition for
15 dissolution, or within 60 days of filing the petition. *When a*
16 *petitioner serves the summons and petition by publication or*
17 *posting pursuant to court order and the respondent files a response*
18 *prior to a default judgment being entered, the petitioner shall serve*
19 *the other party with the preliminary declaration of disclosure*
20 *within 30 days of the response being filed.* The respondent shall
21 serve the other party with the preliminary declaration of disclosure
22 either concurrently with the response to the petition, or within 60
23 days of filing the response. The time periods specified in this
24 subdivision may be extended by written agreement of the parties
25 or by court order.

26 SEC. 3. Section 2107 of the Family Code is amended to read:

27 2107. (a) If one party fails to serve on the other party a
28 preliminary declaration of disclosure under Section ~~2104~~ *2104*,
29 *unless that party is not required to serve a preliminary declaration*
30 *of disclosure pursuant to Section 2110*, or a final declaration of
31 disclosure under Section 2105, or fails to provide the information
32 required in the respective declarations with sufficient particularity,
33 and if the other party has served the respective declaration of
34 disclosure on the noncomplying party, the complying party may,
35 within a reasonable time, request preparation of the appropriate
36 declaration of disclosure or further particularity.

37 (b) If the noncomplying party fails to comply with a request
38 under subdivision (a), the complying party may do one or more
39 of the following:

40 (1) File a motion to compel a further response.

1 (2) File a motion for an order preventing the noncomplying
2 party from presenting evidence on issues that should have been
3 covered in the declaration of disclosure.

4 (3) File a motion showing good cause for the court to grant the
5 complying party's voluntary waiver of receipt of the noncomplying
6 party's preliminary declaration of disclosure pursuant to Section
7 2104 or final declaration of disclosure pursuant to Section 2105.
8 The voluntary waiver does not affect the rights enumerated in
9 subdivision (d).

10 (c) If a party fails to comply with any provision of this chapter,
11 the court shall, in addition to any other remedy provided by law,
12 impose money sanctions against the noncomplying party. Sanctions
13 shall be in an amount sufficient to deter repetition of the conduct
14 or comparable conduct, and shall include reasonable attorney's
15 fees, costs incurred, or both, unless the court finds that the
16 noncomplying party acted with substantial justification or that
17 other circumstances make the imposition of the sanction unjust.

18 (d) Except as otherwise provided in this subdivision, if a court
19 enters a judgment when the parties have failed to comply with all
20 disclosure requirements of this chapter, the court shall set aside
21 the judgment. The failure to comply with the disclosure
22 requirements does not constitute harmless error. If the court granted
23 the complying party's voluntary waiver of receipt of the
24 noncomplying party's preliminary declaration of disclosure
25 pursuant to paragraph (3) of subdivision (b), the court shall set
26 aside the judgment only at the request of the complying party,
27 unless the motion to set aside the judgment is based on one of the
28 following:

29 (1) Actual fraud if the defrauded party was kept in ignorance
30 or in some other manner was fraudulently prevented from fully
31 participating in the proceeding.

32 (2) Perjury, as defined in Section 118 of the Penal Code, in the
33 preliminary or final declaration of disclosure, in the waiver of the
34 final declaration of disclosure, or in the current income and expense
35 statement.

36 (e) Upon the motion to set aside judgment, the court may order
37 the parties to provide the preliminary and final declarations of
38 disclosure that were exchanged between them. Absent a court order
39 to the contrary, the disclosure declarations shall not be filed with
40 the court and shall be returned to the parties.

1 SEC. 4. Section 2110 of the Family Code is amended to read:
2 2110. In the case of a default judgment, the petitioner may
3 waive the final declaration of disclosure requirements provided in
4 this chapter, and shall not be required to serve a final declaration
5 of disclosure on the respondent nor receive a final declaration of
6 disclosure from the respondent. However, a preliminary declaration
7 of disclosure by the petitioner is ~~required~~ *required unless the*
8 *petitioner served the summons and petition by publication or*
9 *posting pursuant to court order and the respondent has defaulted.*

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